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December 18, 2006

Signature

Date

**APPEAL BRIEF APPEALING FROM THE EXAMINER TO THE BOARD OF
PATENT APPEALS AND INTERFERENCES**

In re application of:

Serial #: 10/750,738
For: Coffee Saver
Filed: December 31, 2003
Inventor: John M. Rice
GAU: 3742
Examiner: Fuqua, Shawntina
Docket #: RiceWedge

REQUEST FOR EXTENSION OF TIME

The applicant herewith petitions the Commissioner of Patents and Trademarks to extend the time for filing the present appeal brief for 1 month from November 18, 2006 to December 18, 2006. An appropriate credit card authorization for this one month extension and for filing the present appeal brief will accompany the filing of this paper. The applicant is a small entity.

NOTICE REGARDING SPECIAL FONT

While unusual, the present 13 point bold font is used herein and throughout the file associated with the present application owing to a visual impairment of the present appellant. The slightly larger and darker font permits the appellant to read and review the correspondence. No other significance should be attributed thereto. Where special emphasis is placed, italics and underlining will be used rather than bold type style, and an appropriate note "(emphasis added)" will be provided.



APPEAL TO THE BOARD OF APPEALS

Appellant respectfully appeals from the Examiner's final rejection of claims 1 - 14 dated May 17, 2006.

1. REAL PARTY IN INTEREST

The real party in interest is the above named inventor, John M. Rice.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

Claims 1 - 14 are pending, stand finally rejected, and form the basis of the present appeal.

4. STATUS OF AMENDMENTS

No amendments are pending.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The three independent claims 1, 7 and 12 each describe a wedge (10) which spaces and tilts a coffee pot (30) relative to a warming surface (20). The wedge enables thermal convection currents in air to form a thermal blanket about the coffee pot. The slight tilt ensures that small amounts of coffee pool adjacent the point of contact with the warming surface. The wedge may carry indicia or logos (12, FIG. 2) for advertising or other purpose. Most preferably, the wedge is small relative to the warming surface and coffee pot base, and will not only therefore form a suitable spacer, but also be small enough to be incorporated into beverage packaging such as in a coffee can or the like beverage retail container.

Independent Claim 1

Claim 1 recites:

A combination beverage pot and warming surface having a beverage pot (30, Fig. 1, first referenced by number on page 9, line 7) suitable for retaining a liquid beverage therein and a base (31, Fig. 1, first referenced by number on page 9, line 5), and a warming surface (20, Fig. 1, first referenced by number on page 9,

line 4) providing a source of heat which couples with said beverage pot base (31, Fig. 1) for maintaining said liquid beverage at a temperature elevated with respect to a surrounding ambient temperature, wherein the improvement comprises a spacer (10, Fig. 1, first referenced by number on page 9, line 3) between one portion of said beverage pot base (31, Fig. 1, first referenced by number on page 9, line 5) and said warming surface (20, Fig. 1, first referenced by number on page 9, line 4) to elevate a majority of said beverage pot base above and separate from said warming base while tilting said beverage pot base relative to said warming surface (specification page 9, lines 16 - 18), a minority of said beverage pot base in direct contact with said warming base (Fig. 1, specification page 9, lines 17 - 19 and page 10, lines 4 - 6). (Each of the recitations of this claim, with the exception of the final clause beginning "a minority of said beverage pot" will also be found in the summary section between page 6, line 23 and page 7, line 5)

Independent Claim 7

Claim 7 recites a coffee serving apparatus comprising:

a liquid retaining pot (30, Fig. 1, first referenced on page 9, line 7)

having a base and side walls and retaining a liquid therein;

a heating base (20, Fig. 1, first referenced by number on page 9, line 4)

providing thermal energy adequate to elevate said liquid

retaining pot and any liquid retained therein at a temperature elevated with respect to ambient; and

a means to tilt said liquid retaining pot with respect to said heating base (10, Fig. 1, first referenced by number on page 9, line 3) while maintaining said liquid retaining pot base in point contact with said heating base (Fig. 1, page 9, lines 18 - 19), said retained liquid pooled to a maximum depth adjacent said point contact (page 9, lines 19 - 21). (Each of the recitations of this claim will also be found in the summary section on page 7, between lines 6 - 12)

Independent Claim 12

Claim 12 recites a method for extending the serving life of a warm beverage held within a pot having a generally planar bottom parallel, adjacent with and warmed upon a generally planar surface, comprising the steps of:

placing a spacer upon said warming surface in a location offset from center with respect thereto (page 11, lines 5 - 7);

supporting a minority portion of said pot bottom upon said spacer and a second minority portion of said pot bottom upon said surface, a majority portion of said pot bottom spaced from but adjacent

and elevated with respect to said warming surface (page 11, lines 12 - 13, page 9, lines 16 - 19, and page 10, lines 4 - 6); and heating said warming surface above ambient to form an air blanket about said pot through thermally induced air convection currents (page 9, lines 6 - 15). (Each of the recitations of this claim will also be found in the summary section on page 7, between lines 13 - 22)

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether under 35 U.S.C. § 102(b) claims 1, 2, 6 - 8, 11, 12, and 14 are anticipated by Box.**
- B. Whether under 35 U.S.C. § 103(a) claims 3 - 5, 9, 10 and 13 are unpatentable over Box in view of Stasyshyn.**

7. ARGUMENTS

I. REJECTIONS UNDER 35 U.S.C. § 112, first paragraph.

There are no outstanding rejections under this section..

II. REJECTIONS UNDER 35 U.S.C. § 112, second paragraph

There are no outstanding rejections under this section.

III. REJECTIONS UNDER 35 U.S.C. § 102

Grounds of Rejection A: Whether under 35 U.S.C. § 102(b) claims 1, 2, 6 - 8, 11, 12, and 14 are anticipated by Box.

The primary issue before the Examiner and the Board with respect to this ground of rejection is whether Box contains or teaches a device to tilt a beverage pot base relative to the warming surface, such that a majority of the base is above

and separate and a minority is in direct contact with the warming base.

Each independent claim recites this feature. Claim 1 recites in relevant part: “a spacer between one portion of said beverage pot base and said warming surface to elevate a majority of said beverage pot base above and separate from said warming base while tilting said beverage pot base relative to said warming surface, *a minority of said beverage pot base in direct contact with said warming base.*”

(Emphasis added) Original claim 7 recites in relevant part: “a means to tilt said liquid retaining pot with respect to said heating base while *maintaining said liquid retaining pot base in point contact with said heating base*, said retained liquid pooled to a maximum depth adjacent said point contact.” (Emphasis added) Original claim 12 recites in relevant part: “supporting a minority portion of said pot bottom upon said spacer and *a second minority portion of said pot bottom upon said surface*, a majority portion of said pot bottom spaced from but adjacent and elevated with respect to said warming surface.”(Emphasis added)

The Examiner argues in the final rejection, section 3, third and fourth lines, that Box discloses “a warming surface (20)”. Using this description, appellant and his representative cannot then determine how pot (18) ever could be in direct contact with warming surface (20). This feature, as shown by the emphasis above, is recited by each of the claims.

The specific language of the claims further distinguishes from each of the

remaining embodiments and teachings of Box. The Board will recognize that there are several different embodiments illustrated in Box. Figures 2 - 4 illustrate a first embodiment plate, which is NOT the warming surface. This is very clearly described by Box in column 5 between lines 11 - 14, which state: "Thermal interface plate device 30 embodying the present invention is best shown in FIGS. 2-4 and is adapted to be inserted between a hot plate and a vessel to be heated thereby." Consequently, this embodiment of Box cannot meet the limitations of any of the claims, each which require direct contact with the warming surface, as already described.

Turning to the remaining embodiments of Box, including the second shown in Figures 5-6, the third embodiment of Figures 7-8, and the fourth embodiment of Figures 9 - 10, the Board will recognize that these embodiments are, in fact, the warming surface. As described by Box in reference to Figures 5-6 in column 7, lines 15 - 17: "A warming unit 510 embodying the present invention and intended for use as a hot plate on a coffee brewing machine" The Board will recognize that element 560 is a heating element which is welded thereon. As with Figures 5-6, the embodiment of Figures 7-8 is described in column 8 as also including a heating element 760. Lines 61 - 64 of column 8 are telling with regard to this issue, where Box states: "The hot plate 910 of FIG. 9 is similar in structure to hot plates 510 and 710 of FIGS. 5 and 7 respectively...." Once again, the claim recitations require that

the spacer separate the pot from the warming surface, a feature which could not be accomplished by the dimples of these later embodiments, which are in fact a part of the actual warming surface of these embodiments.

The present arguments regarding Box are not simply semantics. In the Box first embodiment, all contact with the warming plate is lost. This loss of contact reduces the control over temperature that is designed into these warming plates. Such control is not lost in the present invention.

In the remaining embodiments of Box, the control has been designed into the warming plate, but reduced contact must come with higher temperatures upon the warming plate than those in the prior art. As the Board will recognize, for warming plates to be effective at maintaining the temperatures desired by the ordinary consumer at the most preferred temperature, for which the warming plate is designed in all coffee makers, the use of a plurality of dimples will result in less thermal contact and lower heat conduction. Consequently, to maintain an ordinary beverage temperature, these dimples would have to be operated at a higher temperature than an ordinary warming plate on a coffee maker. The Board will also recognize then that, tilted or otherwise, these embodiments could not alter the pot temperature in any consequential way. Said another way, even if a person were to tilt these later embodiment, which is not taught therein and still does not meet the claim recitations, there would be no benefit to be gained. The contact surface area

would not change in significant way between contact with the four dimple tops and contact with two dimple tops and the generally planar surface. Instead, the coffee pot would simply become more unstable on an already unstable and dangerous surface, increasing the likelihood of accidental and harmful spills many fold over either the prior art warming plates or the present invention. In contrast, the present invention changes the configuration from full contact with the warming surface to either point contact or a minority contact. This change is simply not possible with the Box reference.

It is this very difference which is visceral to the present invention and enables the present invention to be used successfully. Many other advantages are recited as well in the present specification and claims.

Claims 2 and 8

In addition to the foregoing arguments which also apply and are incorporated herein, claims 2 and 8 further recite that the spacer comprises a wedge defined by a thickness generally decreasing with decreasing distance from a center of said beverage pot base. The Board will recognize that the wedge 40, 42 referenced by the Examiner does not have a decreasing thickness as recited, but is instead constant. This fact is very clear from Figures 3 and 4. Rather than the thickness changing as recited, the elevation changes. Were the dimples to be

separate spacers from the warming plate and still permitting contact with the warming plate as recited by the present claims, there would be at least two distinct disadvantages. A first disadvantage is the loss of contact with the warming surface. These dimples would be prone to sliding. Secondly, since the dimples do not truly decrease in thickness with a decrease from center, because they are conical, they would also present a more unstable surface for the coffee pot. In other words, the pot would only be resting upon one point on the round top edge of the dimple, which could permit the pot to be moved even by the beverage sloshing inside the pot. In contrast, the present wedge shape ensures a more stable line of contact with the pot. This not only provides a more stable resting surface, but it also enables a person to slide the pot back against and up the wedge for easy pot placement, as described by the present specification on page 11 between lines 5 and 13: "In operation, a person warming a beverage pot will selectively place coffee saver 10 adjacent retaining ridge 21 of warming surface 20, typically adjacent the back of warming surface 20 farthest from the person, though not limited thereto. The benefit of placement away from the person is the natural ability of coffee pot bottom 31 to rise up and over coffee saver 10 when in sliding contact therewith and moved with respect thereto. The general wedge shape, which in the preferred embodiment decreases in thickness with decreasing distance from the center of coffee pot bottom 31, enables this relative sliding motion. Next, beverage pot 30 will

then be placed onto warming surface 20 and nestled between retaining ridge 21 and wedge 10.”

Consequently, in view of the foregoing arguments with respect to claims 1, 2, 7, 8 and 12, the Board is respectfully requested to reconsider and reverse the Examiner’s rejections under this ground with respect to each of the independent claims and claims dependent therefrom.

IV. REJECTIONS UNDER 35 U.S.C. § 103

Grounds of Rejection B: Whether under 35 U.S.C. § 103(a) claims 3 - 5, 9, 10 and 13 are unpatentable over Box in view of Stasyshyn.

Each of the arguments presented herein above under Grounds of Rejection A with regard to Box are equally applicable here to all of the rejected claims, and are therefore incorporated herein. The Stasyshyn reference does nothing further to overcome the limitations of Box.

In contrast to the present invention, neither Stasyshyn nor Box attempt to tilt the pot, nor to both space a majority of the pot and also maintain point contact with the plate. In addition to the foregoing issues, there are additional issues with the rejections of many of the individual dependent claims, argued separately herein.

Claim 3

The benefit of the rectangular geometry, versus the conical dimples of Box, have been set forth herein above with regard to claims 2 and 8, and are incorporated herein. The Board is respectfully requested to consider the novelty of this difference.

Claims 4 and 9

None of the references of record incorporate the insignia as recited herein. The Examiner, without references, has simply dismissed these recitations. Consequently, the Examiner has failed to make a prima facie case, and the Board is respectfully requested to reverse the rejection of these claims.

Claims 5 and 10

The issue with regard to these claims is whether the prior art relied upon by the Examiner in the final rejection contain or teach a spacer having a thickness less than an elevation of a pot retaining feature. This feature is recited in dependent claims 5 and 10. Neither Stasyshyn nor Box illustrate nor provide any teaching of any pot retaining features. The Examiner's action is also silent on this feature recited in these claims 5 and 10. Nevertheless, as described by the appellant in the present specification on page 10 in lines 8 - 10: "Additionally, coffee saver 10 will

most preferably have a thickness or height less than retaining ridge 21, so as to not disrupt or interfere consequentially with the stability of beverage pot 30 within retaining ridge 21.” The benefit of this added stability, in this era of the hot coffee lawsuit filed against MacDonalds Corporation, cannot be understated. The Box and Stasyshyn references will very adversely affect the desired stability, undoubtedly leading to more accidents and unsuitability of the product for mainstream use.

V. OTHER REJECTIONS OR OBJECTIONS

There are no outstanding rejections under this section.

CONCLUSION

For the reasons outlined herein above, the Board of Appeals is requested to consider and reverse the rejections by the examiner. An appendix of all pending claims is attached. In addition, an evidence appendix and related proceedings appendix are provided.

Respectfully,


Albert W. Watkins
reg. no. 31,676

CLAIMS APPENDIX

The claims, as they are at the time of appeal.

- 1. A combination beverage pot and warming surface having a beverage pot suitable for retaining a liquid beverage therein and a base, and a warming surface providing a source of heat which couples with said beverage pot base for maintaining said liquid beverage at a temperature elevated with respect to a surrounding ambient temperature, wherein the improvement comprises a spacer between one portion of said beverage pot base and said warming surface to elevate a majority of said beverage pot base above and separate from said warming base while tilting said beverage pot base relative to said warming surface, a minority of said beverage pot base in direct contact with said warming base.**
- 2. The combination beverage pot and warming surface of claim 1 wherein said spacer further comprises a wedge defined by a thickness generally decreasing with decreasing distance from a center of said beverage pot base.**
- 3. The combination beverage pot and warming surface of claim 2 wherein said wedge further comprises a rectangular outline from top plan view.**

4. The combination beverage pot and warming surface of claim 2 wherein said wedge further comprises insignia upon a surface.

5. The combination beverage pot and warming surface of claim 2 wherein said wedge thickness is less than an elevation of a pot retaining feature in said warming surface.

6. The combination beverage pot and warming surface of claim 1 wherein said spacer further comprises stamped metal.

7. A coffee serving apparatus comprising:

a liquid retaining pot having a base and side walls and retaining a liquid therein;

a heating base providing thermal energy adequate to elevate said liquid retaining pot and any liquid retained therein at a temperature elevated with respect to ambient; and

a means to tilt said liquid retaining pot with respect to said heating base while maintaining said liquid retaining pot base in point contact with said heating base, said retained liquid pooled to a maximum depth adjacent said point contact.

8. The coffee serving apparatus of claim 7 wherein said tilting means further comprises a wedge defined by a thickness generally decreasing with decreasing distance from a center of said liquid retaining pot base.

9. The coffee serving apparatus of claim 7 wherein said tilting means further comprises visible insignia.

10. The coffee serving apparatus of claim 8 wherein said heating base further comprises a means for retaining a pot therein, said wedge thickness less than an elevation of said pot retaining feature.

11. The coffee serving apparatus of claim 7 wherein tilting means supports a minority portion of said liquid retaining pot.

12. A method for extending the serving life of a warm beverage held within a pot having a generally planar bottom parallel, adjacent with and warmed upon a generally planar surface, comprising the steps of:

placing a spacer upon said warming surface in a location offset from

center with respect thereto;

supporting a minority portion of said pot bottom upon said spacer and

a second minority portion of said pot bottom upon said surface,
a majority portion of said pot bottom spaced from but adjacent
and elevated with respect to said warming surface; and
heating said warming surface above ambient to form an air blanket
about said pot through thermally induced air convection
currents.

13. The method for extending the serving life of a warm beverage of claim 12,
further comprising the step of selectively removing and cleaning said spacer.

14. The method for extending the serving life of a warm beverage of claim 12,
further comprising the steps of:

selectively removing said pot from said warming surface and said
spacer; and
dispensing said warm beverage.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None